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IN THE

**Supreme Court of the United States**

**OCTOBER TERM, 1951**

**No. 522**

**JOSEPH BURSTYN, INC.,**

*Appellant,*

**vs.**

**LEWIS A. WILSON, et al.,**

*Appellees.*

**On Appeal from the Court of Appeals of the  
State of New York**

**MOTION OF THE COMMITTEE ON CONSTITUTIONAL  
LIBERTIES OF THE NATIONAL LAWYERS GUILD  
FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE**

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*To the Honorable, The Chief Justice of the United States  
and the Associate Justices of the Supreme Court of  
the United States:*

The Committee on Constitutional Liberties of the National Lawyers Guild respectfully moves this Court pursuant to Rule 27, paragraph 9, of the Rules of this Court, for leave to file a brief in this case as amicus curiae.

The applicant has sought the consent of the parties herein to the filing of a brief in this case as amicus curiae, but on February 28, 1952, the attorneys for the appellees refused such consent.

The National Lawyers Guild is a bar association composed of attorneys practicing throughout the United States.

As a bar association vitally concerned with maintaining and furthering the underlying tenet of our democratic political ideal, that all persons must be free to communicate and receive information and opinion on all matters of public interest without undue interference or restraint from governmental authority, the National Lawyers Guild, through its Committee on Constitutional Liberties, should like to present its views to assist this Court in arriving at a decision which will reaffirm and strengthen the root principle upon which our nation is founded.

Applicant respectfully requests leave to submit a brief to discuss more fully the following argument which applicant believes material and relevant to the instant case and not presented to the Court by the parties to the cause:

When the United States Senate gave its consent and approval to the *Charter of the United Nations* and the President ratified and deposited this multilateral treaty (59 Stat. 1031-1218), the national government thereby entered into an international commitment to promote and encourage "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion \* \* \*", *United Nations Charter*, Art. 55, Art. 1, Sec. 3.

Today there can no longer be any room for doubt that man's ancient and continuing right to seek an understanding of his relation to the "Laws of Nature and Nature's God" constitutes one of the most basic of all human rights. History reveals repeated instances of the proclamation and establishment of the one and only "true" religion and "true" church with each succeeding proclamation and establishment seeking to suppress and destroy its predecessors and opponents and to brand them and their adherents as false, infidel and sacrilegious. Yet there has remained inviolate man's right to continue his search for further enlightenment in matters of religion, often undertaken in the face of unspeakable ordeals and punishments inflicted by the keepers of the then and there "true" religion or church.

Certainly the framers of the *Charter of the United Nations* intended that treaty to include international recognition of the individual human right to inquire into and evaluate practices and customs held to be sacred by some, and further to include the right freely to broadcast the results of such inquiry.

In recent years the United States has given its official approval to numerous international agreements intended to reaffirm our recognition of these fundamental freedoms and human rights. On January 1, 1942, the United States joined many of our sister nations in signing the *Declaration by United Nations* which expressly included religious freedom among the human rights to be preserved. See: Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations, Commentary and Documents*, World Peace Foundation, Boston, 1949, p. 570. Since the creation of the United Nations Organization our nation has consistently been one of the leaders in the endeavors of the United Nations to spell out in greater detail the nature of these international human rights and fundamental freedoms. See: George C. Marshall, "No Compromise of Essential Freedoms", *Department of State Bulletin*, Oct. 3, 1948, p. 432; Mrs. Franklin D. Roosevelt, "The Struggle for Human Rights", *Department of State Bulletin*, Oct. 10, 1948, p. 460; John M. Cates, Jr., "Expanding Concept of Individual Liberty", *Department of State Bulletin*, Dec. 31, 1951, p. 1058.

The United Nations General Assembly on December 19, 1948, adopted the *Universal Declaration of Human Rights* "as a common standard of achievement for all peoples and all nations". *Department of State Bulletin*, December 19, 1948, p. 752.

This *Universal Declaration* provides:

ARTICLE 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public



or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Similarly, the Ninth International Conference of American States held at Bogota in the spring of 1948 adopted the *American Declaration of the Rights and Duties of Man* which reaffirmed the recognition by the American States "that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality". *Ninth International Conference of American States, Report of the Delegation of the United States with Related Documents*, Department of State Publication #3263, November, 1948. *The American Declaration* which was approved and signed by the United States delegation, acknowledged these essential principles:

ARTICLE III. Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

ARTICLE IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any media whatsoever.

The United States, as a nation, thus has assumed the international obligation, in addition to the constitutional guarantees contained in the First and Fourteenth Amendments, of insuring religious freedom for all of its inhabitants.

The Regents of the Board of Education of the State of New York in banning the motion picture "The Miracle", because they believed it to contain implications which they deemed "sacrilegious", have directly violated these international obligations of the United States which require

that all Americans be protected in the exercise of their religious practices and the expression of their religious opinions.

The New York Court of Appeals in affirming the action of the Regents accepts and applies a dictionary definition of "sacrilegious" as "the act of violating or profaning anything sacred." (303 N. Y. 242, 101 N. E. 2d 665, 670.) It is respectfully submitted that in view of the vast, almost infinite, variety of religious practices and beliefs existent, this definition, if, indeed, it be one at all, raises more questions than it answers. The word "sacred" is about as ambulatory as any word in our language. Transitive in nature, the concept "sacred" must always be considered in the context of who, where, when and why. One man's "sacred" cow is another man's casual repast. In the context of the decision in this case the actual standard applied emerges as "sacred" in accordance with the dogmas and tenets of a single church as they are interpreted by the most conservative groups within that church. Accordingly, this case, in its present status, stands for the proposition that the separate and individual States of the Union are free to censor and ban any communication deemed to be critical of the position assumed by any particular religious sect or power group.

However, international guarantees of freedom of religion, if they mean anything at all, must mean that each individual has the minimum freedom openly to publish and disseminate information and opinion which is contrary to the established or accepted dogma of any particular church or of all churches.

The fact that the communication in the instant case was through the medium of the motion picture, rather than through the more traditional instrumentalities of speech and press, in no way detracts from the obligation of the United States to assure freedom of communication since both the Universal and the American Declarations recognize the right to express and broadcast information and

opinion through any media whatsoever, which in 1948, the date of the adoption of both Declarations, must be understood to include the motion picture.

The international commitments for the protection of freedom of religion which our nation has assumed are particularly applicable in the instant case in view of the fact that the film which was banned by the State of New York was itself an international venture having been produced in several European nations with the objective of world-wide distribution.

The provisions of the *Charter of the United Nations* and the other explicit expressions of foreign policy which our national government has adhered to must take precedence over the statutes and policies of the State of New York.<sup>1</sup> The State of New York is bound by the nation's established foreign policy and has no reserve power or other constitutional sanction for flaunting the individual rights which the national government is obligated to safeguard and promote.

Respectfully submitted,

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<sup>1</sup> See: *United States Constitution*, Art. I, Sec. 10, cl. 1, Art. II, Sec. 2, cl. 2, Art. VI, cl. 2; *Ware v. Hylton*, 3 Dall. (U. S.) 199; *Azakura v. Seattle*, 265 U. S. 332; *Nielson v. Johnson*, 279 U. S. 47; *Hauenstein v. Lynham*, 100 U. S. 483; *Missouri v. Holland*, 252 U. S. 416; *United States v. Belmont*, 301 U. S. 331; *United States v. Pink*, 315 U. S. 203; *Hurd v. Hodge*, 334 U. S. 24; *The Federalist*/No. 64 (John Jay).